Military Whistleblower Protection Act Training for All Hands

March 2000

STATUTORY BASIS

Title 10, United States Code, Section 1034

Similar laws apply to Federal civil servants and

to non-appropriated fund employees (Navy Exchange, MWR, etc.)

SUBSTANTIVE PROTECTIONS

Unlawful to prevent or restrict military

member from communicating with a Member of Congress, an Inspector

General, etc.

REPRISAL PROHIBITED

Unlawful to take an unfavorable personnel

action, or to withhold a favorable personnel

action, because a military member has

made or prepared a protected communication.

THREE QUESTIONS

- Did the complainant make or prepare a protected communication?
- Was an unfavorable personnel action taken (or a favorable personnel action withheld) AFTER the protected communication?
- Were the responsible management officials aware of the protected communication?

BIG QUESTION

Does the EVIDENCE ESTABLISH that the same personnel action would have been taken (withheld) even if the complainant had not made or prepared the protected communication?

WHAT IS A PROTECTED COMMUNICATION?

- Any lawful communication to a Member of Congress or an IG (regardless of subject)
- Includes communication by a third party (spouse, parent, etc.) on behalf of a military member
- Includes cases where management official believes a member made a protected communication

WHAT IS A PROTECTED COMMUNICATION?

A communication to a member of a DOD audit, inspection, investigation, or law enforcement organization or ANY OTHER PERSON (including a person in the chain of command) designated under Component regulations or administrative procedures to receive such communications (see following slide)

TOPIC OF THE PROTECTED COMMUNICATION

Any topic, if made to a Member of Congress or an IG.

Otherwise, must communicate information that member reasonably believes evidences a violation of law or regulation, mismanagement, a gross waste of funds or other resources, an abuse of authority, or a substantial and specific danger to public health and safety

DOES THE UNDERLYING ALLEGATION HAVE TO BE SUBSTANTIATED?

No, only “reasonable belief” by the complainant at the time he/she made the allegation. Reasonable belief is generally presumed. But please try to know what you are talking about when you make a protected communication.

WE DO NOT INVESTIGATE COMPLAINANTS.

WHAT IS AN UNFAVORABLE PERSONNEL ACTION?

- Anything that affects or has the potential to affect that member's current position or career.

- Includes promotion; disciplinary or corrective action; transfer; performance evaluation; decision on pay, benefits or training; or referral for mental health evaluation (MHE).

WHAT IS AN UNFAVORABLE PERSONNEL ACTION?

- Includes favorable actions withheld.

- Includes threatening to take an unfavorable personnel action, or threatening to withhold a favorable personnel action, even if the threat is not carried out.

KNOWLEDGE OF THE COMMUNICATION

In a place like this, it is likely that everybody knows or suspects that someone has written his/her Senator or otherwise made a protected communication.

MENTAL HEALTH EVALUATIONS

Use of mandatory referral for mental health evaluation (MHE) as a reprisal is EXPRESSLY FORBIDDEN. See DOD Directive 6490.1 of 01 OCT 97 (revised version).

COMPLAINT OF REPRISAL

Contact your Echelon II or III IG (us), Naval Inspector General, or DOD Inspector General WITHIN 60 DAYS after you become aware of the personnel action that you believe constituted reprisal. Include detailed chronology of events, list of witnesses, and the relief you seek. Tell us how to contact you (home number preferably).

POINTS OF CONTACT

Department of Defense Inspector General

1-800-424-9098

Naval Inspector General

1-800-522-3451

BUPERS/NPC Inspector General

874-3032 (On Base) 1-877-414-5357 (Off Base)